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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,551	07/22/2003	Curtis Longo	7707.0024-00	6032
22852	7590	09/08/2006		EXAMINER
				SOOHO, TONY GLEN
			ART UNIT	PAPER NUMBER
			1723	

DATE MAILED: 09/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/623,551	LONGO, CURTIS	
	Examiner Tony G. Soohoo	Art Unit 1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 21 June 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 6-8 and 15-29 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-5,9-14 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) *TGS*
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.

- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### **Claim interpretation**

1. In independent claims 1 and 5, a container "located in a tooling" is read as being directed to an intended use and environment of the vibration apparatus container element and does not require a tooling device/element as part of the scope of the invention.

In independent claims 9 11, 13,14, the term "located in the tooling" structure in the method claim has been afforded the broadest reasonable interpretation to include any space, surface, or environment in which "tooling" may occur.

In claim 13, the recitation of "a computer-implemented method", has not been afforded any step or provision of a computer or requirement of a computer to process such steps since there is not positive recitation of a manipulation caused by a computer. This raises a question as to the difference in manipulative scope between independent claims 9 and 13.

### ***Double Patenting***

2. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

3. Applicant is advised that should claim 9 be found allowable, claim 13 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k). The positive manipulative steps are identical, however the preamble differs. Whereas claim 13 does not provide a positive manipulation of a computer, the scope of the invention in a manipulation of vibrating tooling provided by the process claim 13 is identical to claim 9.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 9,11, 13, 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Malvin 3466017.

Malvin teaches a device and method of operation utilizing 1<sup>st</sup> and 2<sup>nd</sup> conductors 7,7, 5,8, which are provided with current flow through wires 9, 10 to create an attraction and repulsion of the conductors to produce a vibration in a container with surfaces 3, 4 which maybe used for and within a vessel 23 which may be used in a tooling process.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 10,12 rejected under 35 U.S.C. 103(a) as being unpatentable over Malvin 3466017.

Malvin discloses all of the recited subject matter as defined within the scope of the claims with the exception of steps of the use of a plural respective capacitors to the 1<sup>st</sup> and 2<sup>nd</sup> wire in the control of the current flow in the wires 9, 10. The use of capacitors as a current control and regulation device is old and well known in the art of electronics and electrical flow. Accordingly, it is deemed that it would have been obvious to one of ordinary skill in the art to with common knowledge in electrical components provide for the wires with the use of capacitors so as to better regulate and optimize the flow of current to the wires for a selective vibration mode.

8. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malvin 3466017 in view of Riedlinger 4821245.

Malvin teaches a device and method of operation utilizing 1<sup>st</sup> and 2<sup>nd</sup> conductors 7,7, 5,8, which are provided with current flow through wires 9, 10 to create an attraction and repulsion of the conductors to produce a vibration in a container with top and

bottom surfaces 3, 4 which maybe used for and within a vessel 23 which may be used in a tooling process.

Malvin discloses all of the recited subject matter as defined within the scope of the claims with the exception of having respective layers of 1<sup>st</sup> and 2<sup>nd</sup> elastomeric materials encompassing the 1<sup>st</sup> and 2<sup>nd</sup> conductors located on the respective 1<sup>st</sup> and 2<sup>nd</sup> surfaces.

The reference to Riedlinger 4821245 teaches that an electromagnetic transducer may have respective conductors a and b which is encompassed by an elastomeric plastic1, 2, column 5, lines 12-19 in which the conductors are energized to cause a controlled attraction or repulsion of the conductors so as to provide movement and vibrate the surfaces, see col. 3, lines 33-68.

In view of the teaching by Riedlinger that one may utilize conductors embedded in an elastomeric plastic array, it is deemed that it would have been obvious to one of ordinary skill in the art to substitute the single conductor element 7, 7, 5, 6 of the Malvin reference with the parallel embedded array as taught by Riedlinger so as to provide a more effective movement of the movable surfaces.

With regards to the use of plural respective capacitors to the 1<sup>st</sup> and 2<sup>nd</sup> wire in the control of the current flow in the wires 9, 10. The use of capacitors as a current control and regulation device is old and well known in the art of electronics and electrical flow. Accordingly, it is deemed that it would have been obvious to one of ordinary skill in the art to with common knowledge in electrical components provide for

the wires with the use of capacitors so as to better regulate and optimize the flow of current to the wires for a selective vibration mode.

***Response to Arguments***

9. Applicant's arguments with respect to claims 1-5, 9-14 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Andersson et al 6823578 and 7059034, and Mandish 5932256 disclose tooling method/devices. Cosby et al 6939032, Rowe Jr. et al 5126979, and Rattener 5233972 disclose conductors with electromagnetic attraction/repulsion.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. This application contains claims 15-29 drawn to an invention nonelected with traverse in Paper No. 12/29/2005. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G. Soohoo whose telephone number is (571) 272 1147. The examiner can normally be reached on 7-5PM,Tue-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Tony G Soohoo

**TONY G. SOOHOO  
PRIMARY EXAMINER**